

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

Crl.Appeal No.89-SB of 2002
Date of decision:10.8.2010

Baldev Singh and others

... Appellants

versus

State of Punjab

... Respondent

CORAM: HON'BLE MR. JUSTICE JORA SINGH.

Present: Mr.Daleep Singh, Advocate,
for the appellants.
Mr.Arshvinder Singh, DAG, Punjab.

...

JORA SINGH, J.

Baldev Singh, Kaur Singh and Bhola Singh @ Balbir Singh filed this appeal to impugn the judgment of conviction and order of sentence 9.1.2002 rendered by Additional Sessions Judge, Bathinda, arising out of FIR No. 50 dated 5.7.1996 under Sections 308/34 IPC, Police Station, Phul.

By the said judgment, they were convicted under Sections 308/34 IPC and sentenced to undergo RI for four years and to pay a fine of Rs.1,000/-, in default of payment of fine, to further undergo RI for two months each.

Prosecution story,in brief, is that on 4.7.1996, Balwinder Singh, injured, was admitted in Civil Hospital, Rampura, and made statement before ASI Gurdip Singh to the effect that today, i.e., 4.7.1996 at about 8.00 AM, he along with Bhola Singh from his brotherhood had gone to this fields. When they were near the fields, then sighted Baldev Singh, Bhola Singh and Kaur Singh while demolishing the watercourse meant to irrigate his land. At that time, Baldev Singh was armed with a kasia. Accused were

requested not to demolish the watercourse, then Bhola Singh raised lalkara that they will teach a lesson for preventing them from demolishing the watercourse. Then Bhola Singh gave a kasia blow from its reverse side hitting on the right hand side of his (Balwinder Singh) forehead. On receipt of kasia blow, Balwinder Singh fell down. Then Baldev Singh and Kaur Singh gave fist blows to him. Raula was raised. Then accused had fled away from the spot with their weapons. After arranging a tractor, Balwinder Singh was shifted to Civil Hospital, Rampura, where he was medico legally examined. Motive to cause injuries was demolition of watercourse. Statement (Ex.PL) after making endorsement by ASI Gurdip Singh was sent to the concerned police station, on the basis of which, formal FIR was recorded. On 5.7.1996, in view of application, doctor gave his opinion (Ex.PB/1).

On 6.7.1996, Investigating Officer had gone to the place of occurrence. Rough site plan with correct marginal notes was prepared. Blood stained earth produced by Bikkar Singh was taken into police possession after the same was made into sealed parcel. On 9.7.1996, accused were arrested while present near Bus Stand, Rayia. Accused Bhola Singh was interrogated and in pursuance of disclosure statement, he got recovered kasia from the specified place. Sketch of kasia was prepared and same was made into a sealed parcel. Kasia was taken into police possession vide separate memo attested by the witnesses. After completion of investigation, challan was presented in the Court.

Accused were charged under Sections 308/34 IPC, to which they pleaded not guilty and claimed trial.

PW1 Dr. Rakesh Kumar Goyal stated that on 4.7.1996 at 9.30

AM, he had medico legally examined Balwinder Singh and found the following injuries on his person:-

“1. 3 cm x 1-1 /2 cm lacerated wound on the right frontal region irregular red in colour bleeding and underlying frontal bone seemed fractured and depressed. X-ray was advised.

2. Black eye right side.”

Injury No.1 was kept under observation and as per x-ray report, injury was declared dangerous to life. Probable time of the injuries was 12 hours.

PW2 Dr.R.K.Kaushal brought bed head ticket of the injured and stated that injured was admitted in the hospital on 6.7.1996 at 8.20 PM. Patient had injury on the right side of his forehead. CT Scan of head showed depressed fracture of the right frontal bone. Eye was black at that time. Injury was dangerous to life. Injured was discharged on 15.7.1996.

PW3 Balwinder Singh is the injured and stated that he along with Bhola Singh was present near his fields, then noticed the appellants while demolishing watercourse meant to irrigate his land. Accused were requested not to demolish the watercourse. Then Bhola Singh gave kasia blow from its blunt side on the right side of his forehead. On receipt of injuries, he fell down. Then Baldev Singh and Kaur Singh gave fist blows. Raula was raised. Then the accused had fled away from the spot with their weapons. After arranging vehicle, he was shifted to Civil Hospital, Rampura, where he was medico legally examined.

PW4 Bhola Singh is the eye witness and supported the version of Balwinder Singh by saying that in his presence, accused had given

injuries to Balwinder Singh.

PW5 HC Harbhajan Singh was with the police party headed by ASI Gurdip Singh. When Bikkar Singh produced blood stained shirt of Balwinder Singh, same was taken into police possession vide separate memo attested by the witnesses, after converting it into a sealed parcel. Statement of Bhola Singh was also recorded. Appellants were arrested while present near Bus Stand of Rayia. In pursuance of disclosure statement, Bhola Singh got recovered kasia from the specified place. Sketch of kasia was prepared and taken into police possession.

PW6 HC Gurmail Singh had delivered special report to the Ilaqa Magistrate.

PW7 Inspector Bhupinder Singh stated that he had partly investigated this case. On 26.7.1996, he had recorded the statements of AMHC Gurparminder Singh and Constable Paramjit Singh.

PW8 ASI Gurdip Singh is the Investigating Officer.

PW9 Dr. Baldev Singh stated that on 4.7.1996, he had examined x-ray report of Balwinder Singh. Depressed fracture of right frontal bone was noticed. Ex.PU is the ex-ray report.

After close of the prosecution evidence, statements of accused under Section 313 Cr.P.C. were recorded. They denied all the prosecution allegations and pleaded to be innocent.

Defence version of Kaur Singh was that he was innocent, whereas defence version of Baldev Singh and Bhola was that Balwinder Singh and his relations had forcibly constructed watercourse in their fields on the intervening night of 3/4.7.1996 and had irrigated the land of Balwinder Singh from the motor of Nachattar Singh. Water started flowing

through their fields. They along with Kaur Singh had gone to the fields with bullock cart. Bullock cart had entered that watercourse in order to go to their fields. Watercourse had split out. Balwinder Singh grappled with them. Baldev Singh was thrown on the ground in the passage and started giving fist and knee blows while sitting on his (Baldev Singh) chest, as a result of which, 2 teeth of Baldev Singh were broken. Balwinder Singh tried to strangle Baldev Singh, then Bhola Singh gave a dang blow on the forehead of Balwinder Singh in order to save Baldev Singh. After that, Balwinder Singh and his relation went away. Baldev Singh was brought to Civil Dispensary, Phul, where he was medico legally examined. Matter was reported to ASI Gurdip Singh, but he did not record the statement of Baldev Singh because he was conniving with the opposite party. False case was got registered against them

After hearing learned Public Prosecutor for the State, learned defence counsel for the appellants and from the perusal of evidence on file, appellants were convicted and sentenced as stated aforesaid.

I have heard learned defence counsel for the appellants, learned State counsel and have gone through evidence on file.

Learned counsel for the appellants argued that according to the prosecution story, watercourse was constructed to irrigate the land of Balwinder Singh from the motor of Bachittar Singh. Watercourse was demolished by the appellants. When complainant party requested the appellants not to demolish, then appellants had given injuries to Balwinder Singh, but, in fact, watercourse was constructed in the land of the appellants on the intervening night of 3/ 4.7.1996 and through that watercourse, Balwinder Singh had irrigated his land. At the time of occurrence, water

was flowing through the fields of appellants. Baldev Singh and Bhola Singh had gone to their fields. Their bullock cart entered into that watercourse. When watercourse split out, then Balwinder Singh and Bhola Singh had grappled with appellant Baldev Singh. Baldev Singh was given fist and knee blows. Balwinder Singh tried to strangle Baldev Singh, then Bhola Singh gave danda blow. Argued that Kaur Singh was not present at the spot. Baldev Singh as per prosecution story had given fist blows to the complainant but no injury was noticed at the time of medico legal examination of Balwinder Singh. Only one injury was noticed on the person of Balwinder Singh. Second injury was the result of injury No.1. If appellants had the intention to commit the crime, then blow should have been given from the right side of kasia. There was no idea to give blow from its reverse side. Blow was not repeated. No offence punishable under Section 308 IPC is made out. Injury was caused by appellant Bhola Singh when complainant party tried to strangle Baldev Singh. In defence, Bhola Singh gave danda blow. If the Court is of the opinion that injury was caused by Bhola Singh, then he is liable for punishment under Section 325 IPC and not under Section 308 IPC. To convict the appellants under Section 308 IPC, appellants should have the intention and knowledge to cause injuries. There was a sudden fight amongst the parties. Occurrence is dated 4.7.1996. At that time, Baldev Singh was 64 years' old, Kaur Singh was 26 years' old, whereas Bhola Singh was 32 years' old. Baldev Singh and Kaur Singh, as per prosecution story, had given fist blows. Baldev Singh and Kaur Singh have already undergone one month and twenty five days, each out of actual sentence, whereas Bhola Singh has already undergone three months and eleven days. Appellants are ready to

compensate the injured. Requested to take lenient view qua sentence.

Learned State counsel argued that there was a watercourse by the side of land of appellants and through that watercourse, complainant had irrigated his land. Allegation of appellants is that watercourse was constructed on the intervening night of 3/ 4.7.1996. Land was irrigated and when bullock cart of the appellants had entered into that watercourse, then water had split out. Balwinder Singh, injured, had grappled with Baldev Singh and when he tried to strangle him, then to save Baldev Singh, Bhola Singh gave danda blow. That means, Baldev Singh and Bhola Singh were very much present at the time of occurrence. No dispute about the presence of Balwinder Singh and eye witness Bhola Singh.

Balwinder Singh and Bhola Singh, while appearing in Court, then categorically stated that on 4.7.1996 at 8.00 AM, appellants had caused injuries. Earlier to the occurrence, there was no dispute amongst the parties. Dispute was regarding demolition of watercourse. Without previous enmity, there was no idea to name the appellants. Injury No.1 on the person of Balwinder Singh was found to be dangerous to life. Injury was from the back side of kasia, but injury was on the forehead. If Bhola Singh had no intention to cause injury, then injury could easily be caused on the non-vital part of body. Blow was given with an intention to murder. Appellants had the knowledge that when injury on the head, then death is to occur. Appellants were rightly convicted under Section 308 IPC.

Evidence on file shows that land of complainant party was near the land of the appellants. There was a watercourse adjoining the land of the appellant and this fact is clear from the site plan. No documentary evidence on file that watercourse was in the land of the appellants. If

watercourse was in the land of the appellants, then copies of khasra girdwari, jamabandi or aks shijra could easily be produced to show that there was a watercourse in the land of the appellants. No suggestion to the witnesses that watercourse was in the land of the appellants. No independent witness came forward to state that watercourse was constructed during night time and was in the land of the appellants. Statements of injured and the eye witness, coupled with rough site plan on file show that watercourse was not in the land of the appellants, but was in the passage to irrigate the land from the motor of Bachittar Singh.

Balwinder Singh and Bhola Singh when appeared in Court, then stated that when they were present at the spot at 8.00 AM, then sighted appellants while demolishing watercourse. When they requested the appellants not to demolish the watercourse, then injuries were caused to Balwinder Singh, but allegation of the appellants was that watercourse was constructed during night time and when their bullock cart had entered into watercourse while going to their fields, then water had split out. After that, there was a fight amongst the parties. As per defence version, Baldev Singh and Bhola Singh were present at the spot. When Balwinder Singh tried to strangle Baldev Singh, then Bhola Singh gave danda blow, but no question to the doctor that injury noticed on the person of Balwinder Singh was possible with danda. Balwinder Singh and Bhola Singh were present on the spot. Only dispute is whether Bhola Singh gave danda blow to save Baldev Singh or appellant Bhola Singh had given kasia blow to Balwinder Singh when he was requested not to demolish watercourse. Injury on the forehead cannot be self suffered or self inflicted. Baldev Singh and Kaur Singh gave fist blows but only two injuries were noticed on the person of

Balwinder Singh. Injury No.2 was the result of injury No.1. Injury No.1 was with a kasia blow by Bhola Singh. When fist blows are given, then apparently no injury is to be noticed on the person of injured. Dispute is regarding presence of Kaur Singh only but earlier to the occurrence, complainant party had no enmity with Kaur Singh. Kaur Singh is the brother of Bhola Singh, main accused. So, presence of Kaur Singh at the spot cannot be doubted. If intention of complainant was to implicate the appellants, then it was very easy for the complainant party to level allegation that Kaur Singh was armed with soti and gave blow. After going through the evidence on file, I am of the considered view that appellants were present at the time of occurrence and had caused injuries to Balwinder Singh.

Evidence shows that only one kasia blow from its reverse side was given hitting on the forehead of Balwinder Singh. Blow was not repeated. Baldev Singh and Kaur Singh gave fist blows. Occurrence was at 8.00 AM. Immediately after the occurrence, injured was shifted to the hospital and at 9.30 AM on the same day, Balwinder Singh was medico legally examined. Intimation was also given to the concerned police station by sending ruqa (Ex.PC). After receipt of information, Investigating Officer had gone to Civil Hospital, Rampura, where statement of Balwinder Singh was recorded. According to Dr. Rakesh Kumar Goyal , two injuries were noticed on the person of Balwinder Singh. Injuries were kept under observation and after x-ray, injury No.1 was declared dangerous to life. Admittedly, injured was conscious when mdico legally examined. Injury No.2 was the effect of injury No.1. Injured had left the ward on 5.7.1996. On 6.6.1996, injured was admitted in DMC, Ludhiana, and this fact is clear

from the statement of Dr. R.K.Kaushal, Neurosurgeon. Admission was at 8.20 PM on 6.7.1996. CT Scan of the head showed depressed fracture of the right frontal bone. As per Dr. Kaushal, injury was dangerous to life. No doubt, in cross-examination, Dr.Kaushal stated that in the bed head ticket, no reference that life of patient was ever in danger. Injured Balwinder Singh in examination-in-chief admitted that Baldev Singh, appellant is his uncle and while appearing as PW did not state a word that after receiving injuries, he became unconscious.

So, in view the of statements of injured, eye witness and the doctors, one thing is clear that only one injury was on the person of Balwinder Singh with a kasia blow from its reverse side, but injury was declared dangerous to life.

Learned defence counsel for the appellants cited 2010 (3) RCR (Crl.) 395, Pritam Singh and another vs. State of Punjab. In this case, accused gave stab wound on the abdomen of victim with a small kirpan- Opinion of doctor that injury could be dangerous to life-No offence under Section 307 IPC made out. But the above cited authority is not helpful to the appellants to hold that appellants are liable for offence punishable under Section 325 IPC and not under Section 308 IPC. Kasia was a dangerous weapon. Although from the back side of kasia, Bhola Singh gave blow, but blow was on the forehead of Balwinder Singh. When a blow is given with a deadly weapon hitting the head, that means accused had the intention to murder. Accused cannot argue that he has no knowledge that when injury with a sharp edged weapon on the head, then no question of death. Doctors in the present case specifically stated that injury was x-rayed and as per x-ray report, depressed fracture of the right frontal bone was detected. After

CT Scan of head, injury No.1 was declared dangerous to life. Doctors did not state a word that injury noticed could be dangerous to life. Both the doctors were cross-examined by the defence counsel. No suggestion to the doctors that injury noticed could be dangerous to life and was not dangerous to life. After the occurrence, injured was shifted to Civil Hospital,Rampura, where he remained admitted upto 5.7.1996. Then injured was shifted to DMC,Ludhiana, and remained admitted there upto 15.7.1996. Evidence on the file was rightly scrutinized by the trial Court to opine that appellants are liable for punishment under Sections 308/34 IPC.

Occurrence is dated 4.7.1996. Only one injury was caused and that too from reverse side of kasia. Complainant party is related to the appellants. Land of complainant party was near the land of appellants. Minor dispute regarding irrigation of land by constructing a watercourse. After the present occurrence, appellants did not commit any such act. Baldev Singh was 64 years' old, Kaur Singh was 26 years' old, whereas Bhola Singh was 32 years' old. Baldev Singh and Kaur Singh have already undergone one month and twenty five days, each out of actual sentence, whereas Bhola Singh has already undergone three months and eleven days. Appellants have suffered agony of protracted trial for the last about 14 years. Appellants are to become hard criminals if again sent to jail to serve imprisonment as ordered by the trial Court.

In 2004 (1) RCR (Crl.) 697, Mohan Singh and another versus State of Punjab, conviction was under Section 306 IPC. Suicide by a woman. Father-in-law and mother-in-law were the accused. Father-in-law already died. Mother-in-law was about 73-74 years' old. Incident was 13 years old. Sentence of mother-in-law reduced to already undergone (one

month).

In 2004(3) RCR (Crl.) 372, Maha Singh and others vs. State of Haryana, conviction was under Section 307 IPC. Accused faced trial and appeal for 15 years. Accused were 71 years, 60 years and 48 years old, respectively. Sentence was reduced to already undergone (three months).

In 2004(4) RCR (Crl.) 514, Gurdip Singh and others vs. State of Punjab, conviction was under Section 307 IPC. Appellants had already undergone some part of sentence. They were living peacefully and have not participated in any such act after the occurrence. Held that sending the appellants to jail once again after the lapse of so many years would amount to reopening the wounds which might have healed by now. Sentence was reduced to already undergone, but fine was enhanced from Rs.1,000/- to Rs.10,000/-, to be paid to the injured.

Keeping in view the facts of the present case, I am of the opinion that ends of justice would be fully met if lenient view is taken. Appellants are directed to undergo imprisonment already undergone (one month and twenty five days each in case of Baldev Singh and Kaur Singh and three months and eleven days in case of Bhola Singh). Appellants are further directed to deposit Rs.20,000/- more each as fine within two months before the trial Court, payable to the injured as compensation.

For the reasons recorded above, appeal without merit is dismissed with the modification qua sentence.

10.8.2010

pk

(JORA SINGH)
JUDGE